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IN THE
SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1956.

No. 62.

JACOB SENKO,
Petitioner,

vs.

LaCROSSE DREDGING CORPORATION,
Respondent.

On Writ of Certiorari to the Appellate Court of the
State of Illinois, Fourth District.

BRIEF FOR PETITIONER.

STANLEY M. ROSENBLUM,
408 Olive Street,
St. Louis 2, Missouri,
Attorney for Petitioner.

Of Counsel:

GEORGE J. MORAN,
WILLIAM L. BEATTY,
1930 State Street,
Granite City, Illinois.

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OPINION BELOW.

The opinion of the Fourth District Appellate Court of Illinois is reported in 7 Ill. App. 2nd 307, 129 N. E. 2nd 454. The Supreme Court of Illinois denied leave to appeal without written opinion on the thirteenth of January, 1956 (R. 199).

JURISDICTION.

The judgment sought to be reviewed was entered on the third day of October, 1955, and became final on the 13th day of January, 1956, on the denial of leave to appeal by the Supreme Court of the State of Illinois (R. 199). The Petition for Writ of Certiorari was filed on April 12, 1956, and was granted on May 28, 1956. This action was brought pursuant to the provisions of Title 46, U. S. C. A., Section 688, the same being a portion of what is commonly known as the "Jones Act." Plaintiff's amended complaint alleged specifically that the plaintiff was a seaman and member of a crew of a vessel within the provisions of this act (R. 1).

The jurisdiction of this Honorable Court is invoked under the Act of June 25, 1948, c. 646, 62 Stat. 929, 28 U. S. C. A. 1257. (3).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED.

"The judicial power shall extend to all cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority—to all cases affecting Ambassadors, other public Ministers and Consuls—to all cases of Admiralty and maritime Jurisdiction—to Controversies to which the United States shall be a Party—to Controversies between Citizens of the same State claiming Lands under Grants of different States and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects." Section 2 of Article 3 of the Constitution of the United States.

Recovery for Injury to or Death of Seaman.

"Any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an

action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply; and in case of the death of any seaman as a result of any such personal injury the personal representative of such seaman may maintain an action for damages at law with the right of trial by jury, and in such action all statutes of the United States conferring or regulating the right of action for death in the case of railway employees shall be applicable. Jurisdiction in such actions shall be under the court of the district in which the defendant employer resides or in which his principal office is located." Mar. 4, 1915, c. 153, Sec. 20, 38 Stat. 1185; June 5, 1920, c. 250, Sec. 33, 41 Stat. 1007; 46 U. S. C. A., Sec. 688.

**Extension of Admiralty and Maritime Jurisdiction;
Libel in rem or in Personam;
Exclusive Remedy; Waiting Period.**

"The admiralty and maritime jurisdiction of the United States shall extend to and include all cases of damage or injury, to person or property, caused by a vessel on navigable water, notwithstanding that such damage or injury be done or consummated on land.

"In any such case suit may be brought in rem or in personam according to the principles of law and the rules of practice obtaining in cases where the injury or damage has been done and consummated on navigable water; Provided, that as to any suit against the United States for damage or injury done or consummated on land by a vessel on navigable waters, the Public Vessels Act or Suits in Admiralty Act, as appropriate, shall constitute the exclusive remedy for all causes of action arising after June 19, 1948, and for all causes of action where suit has not been hitherto filed under the Federal Tort Claims Act: Provided further, that no suit shall be filed against the

United States until there shall have expired a period of six months after the claim has been presented in writing to the Federal Agency owning or operating the vessel causing the injury or damage." June 19, 1948, c. 526, 62 Stat. 496; 46 U. S. C. A., Sec. 740.

QUESTIONS PRESENTED FOR REVIEW.

1. Can a State Court disregard the jury's findings of fact that a man is a seaman and substitute its own findings of fact when there is evidence supporting the jury's findings?
2. When a different conclusion can be drawn from undisputed facts, can a State Court substitute its conclusions for the verdict of the jury?
3. Can any of the operating personnel of a dredge operating on the inland waterways of the United States be a "member of the crew" of a vessel within the meaning of the Merchant Marine Act of 1920 (Jones Act)?

STATEMENT OF THE CASE.

In 1946 the U. S. Army Corps of Engineers, through various contractors and subcontractors, including the respondent, LaCrosse Dredging Corporation, commenced construction on the Chain of Rocks Canal Project (R. 39). The canal, which bypasses a treacherous rocky section of the main river channel, was part of a long range over-all plan to make the river more navigable as a whole (R. 39, 63).

The canal, as designed, ran generally north and south from a point in the river north of Hartford, Illinois, to a point in the river near Venice, Illinois. Included as a part of the canal was a lock known as Lock No. 27, which was located at a place about one mile north of the southerly end of the canal (R. 38). South of Lock 27 and for a por-

tion of its length north thereof, the canal followed old Gabaret Chute, a slough which had run more or less parallel to and connecting at both ends with the Mississippi River (R. 38, 77, 78). In past years this chute had been used for swimming and boating. It had also been used commercially by boats and barges hauling mules, coal wagons and other livestock from the mainland to Gabaret Island. A ferry had been operated across the chute from the mainland to Gabaret Island, but this ferry had been discontinued prior to the time construction began on the canal (R. 14, 79, 84, 94, 95).

In 1947, when respondent began its dredging operation on the south part of the canal, it came up Gabaret Chute from the river widening and deeping the canal as it moved north (R. 27, 40, 147). Among the dredges owned and operated by respondent was the "James Wilkinson." Built by the St. Louis Shipyards, it was 136 feet long and 36 feet wide with a draft of 5½ feet. Like all dredges, its principal equipment consisted of a large pump driven by a Diesel motor. It also had auxiliary motors used to operate its generating plant, winches and the "spuds" at the rear of the dredge (R. 325, 158).

Some time late in 1950 or early 1951 the James Wilkinson was brought up the south part of the canal by dredge tenders, and on November 5, 1951, was operating near the south end of Lock 27 (R. 148). At that time the canal in the area where the James Wilkinson was operating was 200 to 300 feet wide (R. 15, 29, 131). Soundings taken in August of 1951 showed that there was a minimum 10-foot channel from the south end of the locks down the south part of the canal to the river, and by November 5, 1951, the water was deeper than it was in August, 1951 (R. 57, 58). Prior to November 5, 1951, small tugs had gone in and out of the south mouth of the canal. In August of 1951 bulkheads were hauled up to Lock 27 through the south part

of the canal on a barge. A derrick barge about 200 feet long, 35 feet wide, and with a full draft of 5 or 6 feet, was also towed up to the lock (R. 57, 58, 69). Prior to 1951 a concrete plant, silos and other equipment were shipped in and out of the south part of the canal. A loading dock was built in 1947 about 400 yards below the locks and about six barge loads of sheet piling and whorley cranes were shipped in and out of the canal over this dock (R. 79, 80).

The James Wilkinson operated with a crew of four—the engineer, the operator or lever man, the oiler and the laborer or deckhand (R. 89).

The operator handled the controls, the engineer ran the machinery, the oiler oiled the machinery and kept it up. All the remaining work on the dredge was done by the laborer or "deckhand" (R. 90).

The petitioner, on November 5, 1951, had been working on the dredge for over a year as the laborer or deckhand. Since the job was on a 24-hour basis, there were three crews that operated the dredge, each crew taking an 8-hour shift. The men ate and lived at their respective homes ashore. Petitioner lived at Mount Olive, Illinois, some 40 miles from the job, and drove back and forth every day (R. 103). His duties were to bring supplies from shore and store them on the dredge, clean up the deck and other parts of the dredge, splice ropes, take soundings for the dredge operator and generally to keep the dredge in shape (R. 16, 17, 18, 31, 32, 55, 103, 104, 114). Petitioner and the other members of the crew, in accordance with Government regulations and orders from the company, wore life jackets when they were on the outside decks or going back and forth to shore in the small boat or dredge tender (R. 90, 104).

The operator, engineer and oiler all belonged to the Operating Engineers Union, while the deckhand belonged

to the Laborers union. Men from Operating Engineers always handled small boats. They were all paid at an hourly rate with time and one-half for overtime on a 40-hour week basis. (R. 29, 30).

Respondent maintained a wooden shed on the bank of the canal, where the men kept their clothes and warmed themselves at a coal stove (R. 91). On the date in question petitioner came ashore to bring three lanterns from the dredge for the use of the shore party in signaling to the dredge. He gave one of these lanterns to one of the shore party and took the other two to the shanty. While there, he was injured as a result of an explosion or flash in the stove. It was not clear whether the explosion itself caused him to be thrown out of the shed or whether he was knocked out by respondent's superintendent who was there at the time and rushed out as the stove exploded (R. 105, 106, 107).

Senko was paid some compensation under the provisions of the Workmen's Compensation Act of Illinois and was given medical attention by respondent.

In August of 1952, prior to the time he was represented by counsel, he filed an application of Adjustment of Claim under the Illinois Compensation Act. On February 4, 1953, at which time he had retained counsel, petitioner appeared at a hearing before an arbitrator and stipulated with respondent that on the 5th of November, 1951, they were operating under the provisions of the Workmen's Compensation Act of Illinois (R. 125). Subsequently an award was entered by the Commission granting him compensation. Pending the filing of this suit under the Jones Act, an appeal was taken by petitioner, which appeal is still pending. No final decision has ever been rendered under the Workmen's Compensation Act. On the 20th of March, 1953, petitioner commenced this action in the City Court of Granite City, Illinois, under the provisions of the

Merchant Marine Act as amended (46 U. S. C. A. 688), alleging in his complaint that he was a seaman and "member of the crew" of the dredge James Wilkinson (R. 1-5).

At the trial of this cause before a jury numerous witnesses testified on behalf of plaintiff, outlining generally the condition of the canal and locks on the date of the accident and prior thereto, the duties of plaintiff in his work on the dredge, and the nature and extent of his injuries. The stipulation was introduced into evidence and argued before the jury. The jury returned a verdict in favor of plaintiff in the sum of \$30,000.00 under the Jones Act, which through remittitur by the trial court was subsequently reduced to \$20,000.00 (R. 182, 183).

Defendant prosecuted an appeal to the Fourth District Appellate Court of the State of Illinois, which on the 3rd day of October, 1955, reversed the finding of the jury and the judgment of the trial court in its entirety and rendered judgment for defendant (R. 198, 199).

Plaintiff thereafter filed a petition for Leave to Appeal with the Supreme Court of the State of Illinois, which petition was denied without opinion on the 13th day of January, 1956 (R. 199).

SUMMARY OF ARGUMENT.

I.

The evidence discloses that Petitioner's duties included cleaning up of the dredge (R. 16, 18, 103); taking care of supplies (R. 31, 104); taking soundings (R. 104, 114); relaying signals from shore (R. 106, 108); splicing rope (R. 18); keeping everything in shape (R. 16, 17); taking lanterns ashore (R. 17); that his duties were confined to the dredge except when he was ashore on the ship's business (R. 17, 55, 108); that he had to wear a life jacket when he was on the outside deck or when he went ashore (R. 16, 104).

The above furnished an evidentiary basis for the finding of the jury under the tests laid down by our Supreme Court. This is true even though the uncontroverted testimony of plaintiff's witnesses might lead different people to a different conclusion. The selection of the most reasonable interpretation of facts is the function of the jury and since there was an evidentiary basis for its finding that plaintiff was a member of a crew, its determination is final even though the reviewing court might reach a different conclusion from the facts. *Tennant v. Peoria & Pekin Union Railway Co.*, 321 U. S. 29, at page 35; *Lavender v. Kurn*, 327 U. S. 645, at 653; *South Chicago Coal & Dock Co. v. Bassett*, 309 U. S. 251.

II.

There were conflicts in the testimony relating to the issue of whether or not petitioner was a seaman and member of the crew of a vessel. Some of the testimony of plaintiff's witnesses on this point was controverted by testimony offered by the defendant. Therefore, the verdict of the jury must stand because it resolved these conflicts of fact.

However, assuming that there was no conflict as to the material evidence, the question of whether or not petitioner was a seaman is still a question of fact for the jury because reasonable men may differ in the conclusion to be reached from given facts, even if disputed. *Gianfala v. The Texas Co.*, 350 U. S. 879.

III.

The Appellate Court stated that the Jones Act did not apply to one employed under a union permit to perform common labor on a local project where his duties were performed while the outfit was securely attached to the ground. They stated that it was a local project even though it was carried out by the United States Army Corps of Engineers for the purpose of making the Mississippi River more navigable as a whole (R. 39, 63). The net result of this reasoning is to deny the benefit of the "Jones Act" to all men engaged in the usual and ordinary dredging operation on our navigable rivers and waterways. Since the "James Wilkinson" was doing the same work as any other dredge, this decision conflicts with the rules laid down by all of our Federal Courts.

Both the respondent and the Appellate Court have assumed that the "James Wilkinson" was a vessel. When she is performing the work for which she is designed, she is in navigation even though to adopt the terminology of the Appellate Court she is "anchored." Since she is a vessel in navigation she must have a crew and the crew are those members who aid her in her dredging operation, including plaintiff who did everything aboard but operate and maintain the machinery.

ARGUMENT.

I. Can a State Court Disregard the Jury's Findings of Fact That a Man Is a Seaman and Substitute Its Own Findings of Fact When There Is Evidence Supporting the Jury's Findings?

In **Tennant v. Peoria & Pekin Union Railway Co.**, 321 U. S. 29, at page 35, this court said:

"It is not the function of a court to search the record for conflicting circumstantial evidence in order to take the case away from the jury on a theory that the proof gives equal support to inconsistent and uncertain inferences. The focal point of judicial review is the reasonableness of the particular inference or conclusion drawn by the jury. **It is the jury, not the court, which is the fact-finding body.**"

The plain language of that decision and of **South Chicago Coal & Dock Co. v. Bassett**, 1940, 309 U. S. 251, 60 S. C. 544, 84 L. Ed. 232, and **Lavender v. Kurn, Trustee of San Francisco Ry. Co.**, 327 U. S. 645, at 653, finds little if any support in the Fourth District Appellate Court of the State of Illinois. Its view on the weight to be accorded a jury verdict is best illustrated in its own words:

"Further, that the provision of law making the compensation act the exclusive remedy of employees on vessels other than the master and members of the crew, is binding on the court and **cannot be evaded by asserting that a jury's notion** of what law should be applied nullifies that provision, where there is no substantial dispute as to the relevant facts."

Not only did the court ignore the petitioner's right to a trial by jury as granted by 46 U. S. C. A., Sec. 688, it also reached a conclusion on the facts in conflict with decisions

of the First Circuit Court of Appeals (*Gahagan Construction Co. v. Armao*, 165 F. 2nd 301, 1948), Fourth Circuit Court of Appeals (*Summerlin v. Massman Const. Co.*, 199 F. 2nd 715, 1952), and Fifth Circuit Court of Appeals (*McKie v. Diamond Marine Co.*, 204 F. 2nd 132).

In the "Gahagan" case the First Circuit held a dredge worker who performed substantially the same duties aboard his dredge as did the petitioner on the *James Wilkinson* to be a seaman and "member of the crew." Like petitioner, he worked an eight-hour shift, signed no articles and lived and boarded ashore.

In the "Summerlin" case the Fifth Circuit Court of Appeals held a fireman on a derrick barge to be a seaman and "member of the crew" irrespective of the fact that he lived ashore.

The Fifth Circuit in the "McKie" case followed the prior decisions on this subject and held that a submissible case for the jury was presented by evidence that plaintiff was a dredge worker engaged in the usual work of persons attached to that type of vessel despite evidence that he lived ashore, was not an articleed seaman, and worked a regular eight-hour shift.

The Federal Court's opinions disclose a general unanimity of decision in allowing the jury's verdict to stand in cases under the Jones Act and the Federal Employers' Liability Act except "when there is a complete absence of probative facts to support the conclusion reached." *Lavender v. Kurn*, 327 U. S. 645, at 653; *South Chicago Coal & Dock Co. v. Bassett*, 1940, 309 U. S. 251, 60 S. C. 544, 84 L. Ed. 232, and *Gianfala v. The Texas Co.*, 350 U. S. 879. However, there still exists a definite conflict on this point between the state courts in Illinois and this court, as evidenced by the decision in *Harsh v. Illinois Term.*, 351 Ill. App. 272, rev. 348 U. S. 940, and the case here presented to the court.

An examination of the evidence presented by petitioner, keeping in mind the test adopted in **Lavender v. Kurn**, 327 U. S. 645, at page 652, and **Tennant v. Peoria & Pekin Union Ry. Co.**, 321 U. S. 29, at page 35, shows that petitioner cleaned up the dredge, took care of supplies (R. 103, 104), took soundings (R. 104, 114), that he only went ashore when he was doing something for the boat, that he watched for the signals from the shore party and relayed them to the engineer (R. 108). The operator of the dredge, who had been working on the river for some twenty-five years, stated that petitioner's duties were to keep the dredge clean, take lanterns to the shore (R. 18), splice ropes and keep everything in shape (R. 18), and that among dredge workers the person doing that job is called a "deckhand" (R. 20). Undoubtedly, here is "an evidentiary basis for the jury's verdict." Although her travels were confined to the movement incidental to dredging in the canal during the year that petitioner was aboard, he did accompany her on whatever travels she did make.

Granted, the fact that petitioner slept at home and boarded ashore lend support to respondent's contention that he was not a seaman, but as was said in **Gahagan Const. Co. v. Armao**, 165 Fed. 2nd 301, at 305 (First Circuit, 1948):

"If different conclusions may be drawn from the facts, the determination of the finder of facts must stand. **South Chicago Coal & Dock Co. v. Bassett**, 1940, 309 U. S. 251, 60 S. Ct. 544, 84 L. ed. 732. Each case presents a different situation. No single factor is controlling, but the whole context must be considered."

Then, too, at Respondent's request, the jury was instructed on the issues in this case. By his thirteenth instruction, he pointed out each and every element to be

taken into consideration by the jury in arriving at a conclusion as to whether or not Petitioner was a seaman within the meaning of the Jones Act (R. 173). Having told the jury that "the essential and decisive elements of the definition of a 'member of a crew' are that the vessel be in navigation; that there be a more or less permanent connection with the vessel and that the worker be aboard primarily to aid in navigation" is the Respondent now to be permitted to question the jury's right and ability to pass on this issue?

The jury, by Respondent's instruction number sixteen, were given a comprehensive summary of the definition of the term "navigable waters." By instruction number twenty they were told that they must find that Petitioner was a seaman as defined in the instructions before they could allow recovery and by instruction number twenty-one, that if the vessel was not operating on navigable waters, then Petitioner could not recover (R. 174, 175). All of the elements concerning whether or not petitioner was under the Jones Act were covered clearly and in understandable language by the instructions. Based on the evidence and these instructions, they found that he was a seaman and member of the crew of a vessel operating on navigable waters of the United States. This verdict is final.

II. When a Different Conclusion Can Be Drawn From Undisputed Facts, Can a State Court Substitute Its Conclusions for the Verdict of the Jury?

The Appellate Court bases its right to review the facts on a finding that there was no substantial dispute as to the relevant facts. This case was contested for four days in the trial court; a total of ten witnesses testified concerning petitioner's duties, the nature of the project on which he was working and his status. There were serious conflicts in the testimony concerning these factors. For example,

respondent's witness Lakin testified that petitioner worked for him in the shore party at various times (R. 127), while several of petitioner's witnesses stated that he worked exclusively with the dredge crew.

Witness Thompson, Vice-President of the Respondent Corporation, testified that the men on the dredge did not take soundings (R. 93), while petitioner testified that soundings were taken by him from the dredge (R. 104, 114). Actually, and more important, there is an inherent conflict in the testimony of each of petitioner's own witnesses, as is true of every contested case, in that some of the facts testified to by each witness would lead the jury to one conclusion, i. e., that Senko was a seaman, while other facts testified to by the same witness would lead them to the opposite conclusion, i. e., that he was not a seaman. Is this conflict to be resolved by the Appellate Court or the jury? As was said by this court in **Tennant v. Peoria & Pekin Union Railway Co.**, 321 U. S. 29, at page 35:

"The very essence of its function is to select from among conflicting inferences and conclusions that which it considers most reasonable (cases cited). That conclusion, whether it relates to negligence, causation or any other factual matter, cannot be ignored. Courts are not free to reweigh the evidence and set aside the jury verdict merely because the jury could have drawn different inferences or conclusions or because judges feel that other results are more reasonable."

Assuming that there was no dispute or conflict as to the material evidence, the Appellate Court decision is still not in accord with the rule as laid down by this court in **Gianfala v. The Texas Co.**, 350 U. S. 879. In that case involving a fireman on an oil drilling barge only one witness was called on behalf of the plaintiff to show her

deceased husband's status as a seaman. This witness was examined and cross-examined by both parties and a stipulation was adopted that the remaining six-man oil drilling crew would testify to substantially the same facts. There were no witnesses called by the defendant and solely on the testimony of one witness the jury held that the deceased was under the "Jones Act" and rendered a verdict in favor of the widow. The Fifth Circuit Court of Appeals (222 Fed. 2nd 382), as did the Fourth District Illinois Appellate Court, held that since the facts were not in dispute the status of decedent was a question of law to be determined by the judge. Petition for Certiorari was granted and the judgment of the Court of Appeals was reversed with directions to the District Court to reinstate its judgment. In its per curiam decision this court cited its own decision of **South Chicago Coal & Dock Co. v. Bassett**, 309 U. S. 251, 60 S. Ct. 544, 84 L. ed. 732, and **Gahagan Construction Co. v. Armao**, 165 F. 2nd 301, wherein the court said at page 305:

"Even if the facts are undisputed, the question of whether a party is a member of the crew is not necessarily one of law. If different conclusions may be drawn from the facts, the determination of the finder of facts must stand."

It is apparent then that little, if any, distinction should be drawn between a case where the facts are disputed and one where they are undisputed. In both situations the jury is entitled to weigh the evidence and reach their own conclusion. The resulting verdict must stand if it is supported by any probative evidence.

III. Can Any of the Operating Personnel of a Dredge Operating on the Inland Waterways of the United States Be a "Member of the Crew" of a Vessel Within the Meaning of the Merchant Marine Act of 1920 (Jones Act)?

The reasoning of the Appellate Court makes it clear that the verdict of the jury was reversed because the court did not believe that the vessel was engaged in maritime work or in navigation. For example, the court said: "The dredge had arms or poles called 'spuds' which pushed into the bottom and held the position and there were also cables to the shore for additional anchorage," and added, "Other than these contacts with the ground, the barge had no means of locomotion." It also referred to petitioner as a person who is not aboard "except when the vessel was anchored."

In distinguishing this case from the case of **McKie v. Diamond Marine Co.**, 204 Fed. 2nd 132; **Wilkes v. Mississippi River Sand and Gravel Co.**, 202 Fed. 2nd 383, and other cases involving dredgeworkers relied on by petitioner, the court said:

"Whether these cases should be regarded as close or as encroaching on enacted legislation is immaterial, they do not apply to a plaintiff employed under a union permit to perform common labor on a local project, and whose duties are performed while the outfit is securely attached to the ground."

The net result of this reasoning denies the benefits of the "Jones Act" to all men engaged in the usual and ordinary dredging operation on our navigable rivers and waterways.

The "James Wilkinson" was no different from the ordinary dredge; the operation it was performing on the 5th of November, 1951, was no different from the typical dredging work done daily on the various rivers throughout the

country. This decision results in a conflict that must ultimately be resolved. Are dredge workers under the "Jones Act," as has been held by the various Circuit Courts of Appeal, or under the State Workmen's Compensation Act as indicated by the Fourth District Appellate Court of the State of Illinois?

The court reasons that petitioner could not be a seaman because he was only aboard the vessel when it was "anchored." A dredge can only perform its primary function when, to adopt the terminology of the court, it is "anchored." When the dredge is not "anchored" it is not, so to speak, working. The true test is whether or not the vessel is in navigation, and a dredge when it is "anchored" and dredging is just as much in navigation as a cargo ship crossing the Atlantic. It follows that the operating personnel of the dredge, i. e., the operator, engineer, oiler and deckhand, are all aiding in the navigation of the vessel.

Both respondent and the Appellate Court assumed that the James Wilkinson was a "vessel." Since this is true then when the vessel is performing the work for which she is designed, whether "anchored" or sunk to the bottom of the ocean as in **Gianfala v. Texas Co.**, she is in navigation. If these two premises are accepted, then the position of the Appellate Court becomes untenable, for how can a vessel be in navigation without a crew? If she has a crew, who are the members of the crew? They are those on board to aid the vessel in the performance of the work for which she was designed; those who conduct the dredging operation, including the petitioner who did everything aboard but operate and maintain the machinery. As was said in **Norton v. Warner Co.**, 321 U. S. 565, at 572, 64 S. Ct. 747:

"His (functions) were indeed different from the functions of any other 'crew' only as they were made so by the nature of the vessel and its navigational requirements."

CONCLUSION.

For the reasons stated, we respectfully submit that the judgment of the Fourth District Appellate Court of the State of Illinois be reversed and the judgment of the trial court be reinstated.

Respectfully submitted,

STANLEY M. ROSENBLUM,
408² Olive Street,
St. Louis 2, Missouri,
Attorney for Petitioner.

GEORGE J. MORAN,
WILLIAM L. BEATTY,
Of Counsel,